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IN THE

CHARLES ELMORE GROVE
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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 971

JOSEPH AGO STASSI,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

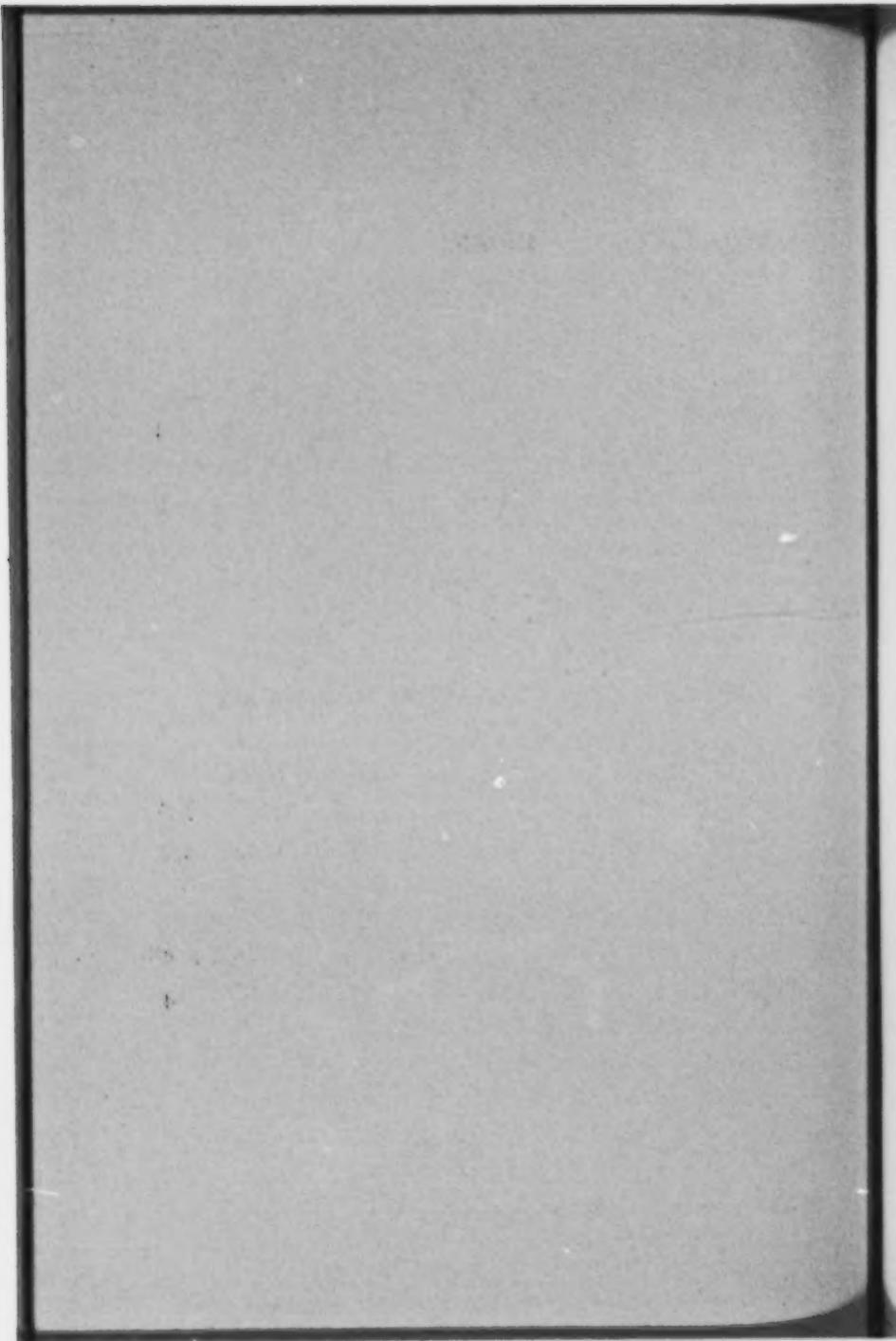
On Petition for a Writ of Certiorari to the United States
Circuit Court of Appeals for the Fifth Circuit.

REPLY BRIEF FOR PETITIONER.

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ARGUMENT.

The government, although conceding that "conceivably there must be hypothetical cases (so referred to only because not yet thought up and reduced to indictment by some prosecutor) where Section 626.1(b) might be so vague in its application as to preclude a criminal prosecu-

tion for failing to comply with it," (Govt.'s Brief, p. 8), contends that "at least as applied to the facts of this case, the regulation is not unconstitutionally vague and indefinite." (Govt.'s Brief, p. 7.)

The government thus asks this Court to determine the constitutionality of Regulation 626.1(b), not from the text of the regulation itself, but from the averments of an indictment attempting to allege an accusation thereunder.

It is settled law "that specification of details of the offense intended to be charged" cannot validate a statute which shows on its face that it is repugnant to the due process clause. "The same strict rule of construction that is applied to statutes defining criminal action," must be applied in determining the constitutionality of Regulation 626.1(b). *M. Kraus & Bros. Inc. v. United States*, 66 S. Ct. 705, 707.

The following language of this Court in *Lanzetta v. State of New Jersey*, 306 U. S. 451, 453, applies with equal force to the present case:

"If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. Cf. *United States v. Reese*, 92 U. S. 214, 221; *Czarra v. Medical Supers.* 25 App. D. C. 443, 453. It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. See *Stromberg v. California*, 283 U. S. 359, 368; *Lovell v. Griffin*, 303 U. S. 444. No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."

The government further states (Govt.'s Brief, p. 8):

"Section 626.1(b) does not enumerate every fact of which a registrant is required to inform his local board, because extensive detail of that nature is not feasible. Instead, the requirement is expressed in terms which must be applied to specific factual situations."

As a matter of fact, Section 626.1(b) does not set forth a single fact of which a registrant is required to inform his local board, and, therefore, since it commands no specific or definite act, its language fixes no ascertainable standard of guilt. *Connally v. General Construction Company*, 269 U. S. 385, 392.

The argument of the government that it does not enumerate every fact "because extensive detail of that nature is not feasible", but that "instead, the requirement is expressed in terms which must be applied to specific factual situations", thus admitting that the criminality of the regulation depends solely upon the viewpoint of the particular jury applying its terms "to specific factual situations", is a complete concession that "the terms it employs to indicate what it proposes to denounce are so vague, indefinite and uncertain that it must be condemned as repugnant to the due process clause." *Lanzetta v. State of New Jersey, supra*, 306 U. S. 618, 621.

Furthermore, there is no solid basis for the government's argument that the Director in drafting Regulation 626.1(b) intended to impose a duty upon each registrant to notify his local board "of any change in the registrant's

job status". The Instructions on the bottom of Form 42-A, which have the force and effect of a regulation under the terms of Regulation 605.51, establish that the Director has placed this duty upon the employer. Such Instructions read in part as follows:

"If the registrant is deferred, the employer must notify the Local Board of any change in the registrant's job status, or if his employment is terminated."
(Italics the Director's.)

If the Director had any intention to impose a similar duty upon the registrant also, he merely had to add just before or after the words "the employer" the necessary connective with the words "the registrant", or he could have imposed a like duty upon registrants by setting forth similar specific language in Regulation 626.1(b). But the Director did not do so, and the omission, whether intentional or otherwise, cannot be supplied by the prosecutor, court or jury.

As said by this Court in *M. Kraus & Bros. Inc. v. United States*, 66 S. Ct. 705, 708:

"But patent omissions and uncertainties cannot be disregarded when dealing with a criminal prosecution. A prosecutor in framing an indictment, a court in interpreting the Administrator's regulations or a jury in judging guilt cannot supply that which the Administrator failed to do by express word or fair implication."

CONCLUSION.

It is respectfully submitted that the petition for writ of certiorari be granted.

Respectfully submitted,

EDWARD R. SCHOWALTER,
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JACOB J. AMATO,
Of Counsel.

I hereby certify that copies of this brief have been served on opposing counsel this day of

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